

wo

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America
v.

ORDER OF DETENTION PENDING TRIAL

Max Lupe Jr.

Case Number: 12-3564M

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts are established: *(Check one or both, as applicable.)*

- ☒ by clear and convincing evidence the defendant is a danger to the community and require the detention of the defendant pending trial in this case.
- ☐ by a preponderance of the evidence the defendant is a flight risk and require the detention of the defendant pending trial in this case.

PART I -- FINDINGS OF FACT

- ☐ (1) There is probable cause to believe that the defendant has committed
- ☐ an offense for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. §§ 801 et seq., 951 et seq, or 46 U.S.C. App. § 1901 et seq.
 - ☐ an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332(b).
 - ☐ an offense listed in 18 U.S.C. § 2332b(g)(5)(B) (Federal crimes of terrorism) for which a maximum term of imprisonment of ten years or more is prescribed.
 - ☐ an offense involving a minor victim prescribed in _____.¹
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

PART II -- WRITTEN STATEMENT OF REASONS FOR DETENTION

(Check one or both, as applicable.)

- ☒ (1) I find that the credible testimony and information submitted at the hearing establish by clear and convincing evidence as to danger that:
The Defendant is alleged on or about September 21, 2012, to have broken his wife's jaw by hitting her in the face with brass knuckles and breaking her arm with blows from a wooden bat because she had embarrassed him by her role as a victim/witness in a November 2012 sexual abuse trial in this Division in the Prescott Courthouse. The Complaint includes a report of a recorded call between Defendant and the alleged victim which contains inculpatory admissions. The Government proffered at the detention hearing that the wife wishes that no criminal charges be brought against her husband but the Government avows that it will pursue the prosecution. Defendant has no recorded criminal history and thus the severity of this incident appears to be an aberration (but note the allegations in paragraph 4 of the Complaint). The aberrancy of the conduct adds however to the risk of danger for there is no ready explanation, such as substance abuse, that could perhaps provide a pathway for the court to fashion a condition that could reasonably assure the safety of the alleged victim or members of the community especially in light of the trial schedule in the related matter (which increases the possibility of further tension in the family and in the community related to this other prosecution).

¹Insert as applicable: Title 18, § 1201 (kidnapping), § 1591 (sex trafficking), § 2241 (aggravated sexual abuse), § 2242 (sexual abuse), § 2244(a)(1) (abusive sexual contact), § 2245 (offenses resulting in death), § 2251 (sexual exploitation of children), § 2251A (selling or buying of children), § 2252 et seq. (certain activities relating to material involving sexual exploitation of minors), § 2252A et seq. (certain activities relating to material constituting or containing child pornography), § 2260 (production of sexually explicit depictions of minors for importation into the U.S.), § 2421 (transportation for prostitution or a criminal sexual activity offense), § 2422 (coercion or enticement for a criminal sexual activity), § 2423 (transportation of minors with intent to engage in criminal sexual activity), § 2425 (use of interstate facilities to transmit information about a minor).

- ☐ (2) I find by a preponderance of the evidence as to risk of flight that:
- ☐ The defendant has no significant contacts in the District of Arizona.
 - ☐ The defendant has no resources in the United States from which he/she might make a bond reasonably calculated to assure his/her future appearance.
 - ☐ The defendant has a prior criminal history.
 - ☐ There is a record of prior failure(s) to appear in court as ordered.
 - ☐ The defendant attempted to evade law enforcement contact by fleeing from law enforcement.
 - ☐ The defendant is facing a minimum mandatory of _____ incarceration and a maximum of _____.
- ☐ The defendant does not dispute the information contained in the Pretrial Services Report, except:
- _____
- _____
- ☐ In addition:
- _____
- _____

The Court incorporates by reference the findings in the Pretrial Services Report which were reviewed by the Court at the time of the hearing in this matter.

PART III -- DIRECTIONS REGARDING DETENTION

The defendant is committed to the custody of the Attorney General or his/her designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

PART IV -- APPEALS AND THIRD PARTY RELEASE

IT IS ORDERED that should an appeal of this detention order be filed with the District Court, it is counsel's responsibility to deliver a copy of the motion for review/reconsideration to Pretrial Services at least one day prior to the hearing set before the District Judge. Pursuant to Rule 59, FED.R.CRIM.P., Defendant shall have fourteen (14) days from the date of service of a copy of this order or after the oral order is stated on the record within which to file specific written objections with the District Court. Failure to timely file objections may waive the right to review. See Rule 59, FED.R.CRIM.P.

IT IS FURTHER ORDERED that if a release to a third party is to be considered, it is counsel's responsibility to notify Pretrial Services sufficiently in advance of the hearing before the District Judge to allow Pretrial Services an opportunity to interview and investigate the potential third party custodian.

DATED this 16th day of November, 2012.



David K. Duncan
United States Magistrate Judge